

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEBRASKA

BYRON K. RED KETTLE,)	
)	
Petitioner,)	8:13CV171
)	
v.)	
)	
SCOTT FRAKES, Director,)	ORDER
Nebraska Department of)	
Correctional Services,)	
)	
Respondent.)	
_____)	

This matter is before the Court on petitioner's Motion to Appoint Counsel (Filing No. [89](#)). "[T]here is neither a constitutional nor statutory right to counsel in habeas proceedings; instead, [appointment] is committed to the discretion of the trial court." [McCall v. Benson, 114 F.3d 754, 756 \(8th Cir. 1997\)](#). As a general rule, counsel will not be appointed unless the case is unusually complex or the petitioner's ability to investigate and articulate the claims is unusually impaired or an evidentiary hearing is required. See, e.g., [Morris v. Dormire, 217 F.3d 556, 558-59 \(8th Cir. 2000\)](#), cert. denied, 531 U.S. 984 (2000); [Hoggard v. Purkett, 29 F.3d 469, 471 \(8th Cir. 1994\)](#). See also Rule 8(c) of the *Rules Governing Section 2254 Cases in the United States District Courts* (requiring appointment of counsel if an evidentiary hearing is warranted). The Court has carefully reviewed the record and

finds there is no need for the appointment of counsel at this time.

IT IS ORDERED that petitioner's Motion to Appoint Counsel (Filing No. [89](#)) is denied without prejudice to reassertion.

DATED this 16th day of December, 2015.

BY THE COURT:

/s/ Lyle E. Strom

LYLE E. STROM, Senior Judge
United States District Court

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